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 United States of America

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AURELIANO CASTILLO-SANCHEZ,

Defendant.

Criminal Case No. 08CR0717-BTM

Date: April 18, 2008

Time: 1:30 p.m.

The Honorable Barry T. Moskowitz

**UNITED STATES' RESPONSE IN
 OPPOSITION TO DEFENDANT'S
 MOTIONS TO**

**1) COMPEL DISCOVERY; AND
 2) GRANT LEAVE TO FILE FURTHER
 MOTIONS**

**TOGETHER WITH STATEMENT OF
 FACTS, MEMORANDUM OF POINTS AND
 AUTHORITIES**

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby files its Response in Opposition to Defendant's above-referenced Motions. This Response in Opposition is based upon the files and records of the case, together with the attached statement of facts and memorandum of points and authorities.

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I**STATEMENT OF THE CASE**

On March 12, 2008, a federal grand jury in the Southern District of California returned an Indictment charging Aureliano Castillo-Sanchez ("Defendant") with one count of attempted entry after deportation, in violation of 8 U.S.C. § 1326(a) and (b). On March 13, 2008, Defendant was arraigned on the Indictment and pled not guilty. The Court set a motion hearing on April 18, 2008. On April 8, 2008, Defendant filed a discovery motion. The United States files the following response in opposition to Defendant's discovery motion.

II**STATEMENT OF FACTS****A. OFFENSE CONDUCT**

On February 12, 2008, at approximately 4:22 a.m., Defendant attempted to enter the United States from Mexico through the pedestrian lanes at the San Ysidro, California, Port of Entry. Defendant presented an Alien Registration Receipt Card (I-551), bearing the name "Alejandro Barboza-Rosas," as his entry to document to Customs and Border Protection Officer W. Reeves. Defendant told Officer Reeves that he was going to work in San Diego. Officer Reeves notices that Defendant did not resemble the photograph on the I-551 card and asked Defendant for another form of identification. Defendant presented a California driver's license and a social security card, both of which beared the name "Alejandro Barbosa." Officer Revees suspected that Defendant was not the owner of the I-551, California driver's license and social security, and therefore, referred Defendant to the secondary office for further inspection.

In the secondary office, Officer J. Roby asked Defendant to write his true name and date of birth on the back of the referral slip (Form I-443). On the back of the referral slip, Defendant wrote "Aureliano Castillo-Sanchez 11-5-59." Officer A. Odems analyzed Defendant's fingerprints using immigration databases and the results confirmed that Defendant is a citizen and national of Mexico who had been previously deported from the United States by an immigration judge. Officer S. Barron informed Defendant that he was under arrest.

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1 **B. DEFENDANT’S POST-MIRANDA STATEMENTS**

2 On February 12, 2008, at approximately 7:14 a.m., Officers Barron and S. Guzman informed
3 Defendant of his Miranda rights in the Spanish language. Defendant stated that he understood his
4 Miranda rights and that he agreed to answer questions without the presence of an attorney. Defendant
5 admitted that he is a citizen and national of Mexico and was born in Cualcoman, Michoacan. Defendant
6 admitted he had been previously deported from the United States to Mexico. Defendant further admitted
7 that the documents he presented to the Officers did not lawfully belong to him.

8 Defendant said that Carmen Ochoa, a person he knew in Colima, Michoacan, made arrangements
9 for Defendant to meet with alien smugglers in Tijuana, Mexico. On February 10, 2008, Defendant took
10 a flight from Colima to Tijuana. Defendant met a male at the Tijuana Airport who took him to a house
11 in Tijuana where Defendant was given several documents for him to enter the United States. Defendant
12 said that Carmen Ochoa advised him to attempt to enter the United States at about 5:30 a.m. because
13 that is the time when many people enter the United States to go to work. On February 12, 2008,
14 Defendant followed an unknown male into the pedestrian lanes and was planning on meeting that person
15 at the McDonald’s restaurant after he crossed into the United States. Defendant agreed to pay \$3,500.00
16 to use the entry documents and to be taken to Los Angeles, California, after he entered the United States.

17 **C. DEFENDANT’S IMMIGRATION HISTORY**

18 Defendant is a citizen and national of Mexico. Defendant has been lawfully excluded, deported
19 and removed from the United States to Mexico on approximately four prior occasions. Defendant was
20 ordered excluded, deported, and removed from the United States to Mexico pursuant to an order issued
21 by an immigration judge on three prior occasions: (1) August 14, 1992; (2) May 18, 1995; and
22 (3) October 29, 1996. Defendant was most recently removed from the United States on January 17,
23 2007. After the last time Defendant was lawfully ordered excluded, deported, and removed from the
24 United States, there is no evidence in the reports and records maintained by the Department of
25 Homeland Security that Defendant applied to the U.S. Attorney General or the Secretary of the
26 Department of Homeland Security to lawfully return to the United States.

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D. DEFENDANT'S CRIMINAL HISTORY

Defendant has an extensive criminal history involving narcotics trafficking and immigration offenses. On December 20, 1989, Defendant was convicted of multiple counts of the sale of cocaine, a felony, in violation of California Penal Code § 11352, and received a sentence of 64 months in prison. On July 14, 1993, Defendant was convicted of possessing marijuana for sale and for transporting more than 28.5 grams of marijuana, felonies, in violation of California Penal Code §§ 11359 and 11360(a). On May 20, 1996, Defendant was found in violation of his parole with regard to his 1993 convictions and was sentenced to prison to finish his term of parole. On March 9, 2004, Defendant was convicted of drunk driving in Shasta Superior Court and was sentenced to a term of jail and 3 years probation. On April 4, 2005, Defendant was convicted of being a deported alien found in the United States, a felony, in violation of 8 U.S.C. § 1326, and sentenced by a district judge in the Eastern District of California to 37 months in prison followed by 3 years of supervised release. [See Criminal Case No. 04CR0194.]

III

**THE UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTIONS
ALONG WITH MEMORANDUM OF POINTS AND AUTHORITIES**

A. DEFENDANT'S MOTION TO COMPEL DISCOVERY SHOULD BE DEINED

As of the date of this Motion, the United States has produced 149 pages of discovery (including reports of the arresting officers and agents, a criminal history report, documents concerning Defendant's prior convictions and immigration history) and 1 DVD-ROM containing Defendant's videotaped, post-arrest statement.

1. United States' Discovery Obligations

The United States will continue to comply with its obligations under Brady v. Maryland, 373 U.S. 83 (1963), the Jenks Act (18 U.S.C. §3500 et seq.), and Rule 16 of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). At this point the United States has received **no** reciprocal discovery. In view of the below-stated position, the United States respectfully requests the Court issue no orders compelling specific discovery by the United States at this time.

As to exculpatory information, the United States is aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972) and will comply. The

1 United States will also produce any evidence of bias/motive, impeachment or criminal investigation of
2 any of its witnesses of which it becomes aware. An inquiry pursuant to United States v. Henthorn, 931
3 F.2d 29 (9th Cir. 1991) will also be conducted. However, the United States will not produce rebuttal
4 evidence in advance of trial. See United States v. Givens, 767 F.2d 574, 584 (9th Cir. 1984).

5 The United States has already provided Defendant with a copy of his criminal record and related
6 court documents, in accordance with Fed. R. Crim. P. 16(a)(1)(D). See United States v.
7 Audelo-Sanchez, 923 F.2d 129, 130 (9th Cir. 1990). Should the United States determine that there are
8 any additional documents pertaining to Defendant's prior criminal record, those documents will be
9 promptly provided to Defendant.

10 The United States has provided information within its possession or control pertaining to the
11 prior criminal history of Defendant. If the United States intends to offer any evidence under Rule 404(b)
12 or 609 of the Federal Rules of Evidence, it will provide notice promptly to Defendant. The United
13 States will produce any reports of experts that it intends to use in its case-in-chief at trial or such reports
14 as may be material to the preparation of the defense.

15 The United States will provide a list of witnesses in its trial memorandum. The grand jury
16 transcript of any person who will testify at trial will also be produced. The United States has complied
17 and will continue to comply with Fed. R. Crim. P. 16(a)(1)(G) and provide Defendant with notice and
18 a written summary of any expert testimony that the United States intends to use during its case-in-chief
19 at trial under Fed. R. Evid. 702, 703, or 705. The United States will also provide Defendant with any
20 scientific tests or examinations in accordance with Rule 16(a)(1)(F).

21 In sum, the United States has already produced reports, criminal history documents, charging
22 documents, a DVD the post-arrest statements, and three deportation tapes. To the extent Defendant
23 requests specific documents or types of documents, the United States will continue to disclose any and
24 all discovery required by the relevant discovery rules. Accordingly, the United States respectfully
25 requests that no orders compelling specific discovery by the United States be made at this time.

26 **2. Alien File**

27 The United States objects to Defendant's request for a "full copy" of his Alien File ("A-File").
28 In addition, the United States objects to Defendant's request to inspect his A-File. This information is

1 equally available to Defendant through a Freedom of Information Act request. Even if Defendant could
 2 not ascertain the A-File through such a request, the A-File is not Rule 16 discoverable information. The
 3 A-File contains information that is not discoverable like internal government documents and witness
 4 statements. See Fed. R. Crim. P. 16(a)(2). Witness statements would not be subject to production until
 5 after the witness for the United States testifies and provided that a “motion” is made by Defendant. See
 6 Fed. R. Crim. P. 16(a)(2) and 26.2. Thus, the A-File associated with Defendant need not be disclosed.

7 Defendant claims that the A-File must be disclosed because (1) it may be used in the United
 8 States’ case-in-chief; (2) it is material to his defense; and (3) it was obtained from or belongs to him.
 9 See Fed. R. Crim. P. 16(a)(1)(E). The United States will produce documents it intends to use in its
 10 case-in-chief. Evidence is material under Brady only if there is a reasonable probability that had it been
 11 disclosed to the defense, the result of the proceeding would have been different. See United States v.
 12 Antonakeas, 255 F.3d 714, 725 (9th Cir. 2001). However, Defendant has not shown how documents
 13 in the A-File are material. Finally, Defendant does not own the A-File. It is an agency record. Cf.
 14 United States v. Loyola-Dominguez, 125 F.3d 1315 (9th Cir. 1997) (noting that A-File documents are
 15 admissible as public records). Should the Court order inspection of relevant documents from the A-File,
 16 the United States will facilitate the inspection as it does in other cases.

17 **C. DEFENDANT’S MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

18 The United States does not oppose Defendant’s request to file further motions if they are based
 19 on new discovery or other information not available to Defendant at the time of this motion hearing.

20 **IV**

21 **CONCLUSION**

22 For the foregoing reasons, the United States requests the Court deny Defendant’s Motions to
 23 Compel Discovery, Dismiss the Indictment, and Grant Leave to File Further Motions, unless unopposed.

24 DATED: April 13, 2008.

25 Respectfully submitted,

26 KAREN P. HEWITT
 27 United States Attorney

28 /s/ Joseph J.M. Orabona
 JOSEPH J.M. ORABONA
 Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) Criminal Case No. 08CR0717-BTM
)
Plaintiff,)
)
v.) **CERTIFICATE OF SERVICE**
)
AURELIANO CASTILLO-SANCHEZ,)
)
Defendant.)

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **The United States' Response in Opposition to Defendant's Motions to Compel Discovery and Grant Leave to File Further Motions** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Erick Guzman, Esq.
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5008
Lead Attorneys for Defendant

A hard copy is being sent to chambers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 13, 2008.

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney